Wawasan Cempaka Sdn Bhd v Bank Islam Malaysia Bhd

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO W-04-119-1995
SHAIK DAUD, MAHADEV SHANKAR AND NH CHAN JJCA
14 MAY 1996

Civil Procedure *— Jurisdiction — Sessions court — Claim for delivery of vacant possession and damages — No dispute as to ownership — Whether sessions court has jurisdiction to order delivery of vacant possession of immovable property where dispute as to ownership does not arise — Subordinate Courts Act 1948 ss 65(1)(a) & (b), 69(a), 70 & 71*

The respondent was the registered proprietor of two pieces of land in Kuala Lumpur ('the land'). Without the respondent's knowledge, the appellant, which was a trespasser, occupied the land. The appellant then erected an illegal structure on the land. As a result, the respondent received a notice from Dewan Bandaraya Kuala Lumpur to demolish the structure, failing which legal action would be taken against it. As the appellant refused to vacate, the respondent accordingly filed an application for summary judgment in the sessions court to obtain recovery of the land, damages and costs. In turn, the appellant filed an application to have the action struck out on the ground that the sessions court had no jurisdiction to hear the action. The sessions court dismissed the respondent's application, allowed the appellant's application to strike out, but refused to allow any costs to the appellant. The respondent appealed to the High Court. The appellant filed a cross-appeal against the order on costs. Both appeals were heard together. The High Court concluded that by virtue of s 70 of Subordinate Courts Act 1948 ('the Act'), the sessions court had jurisdiction to order delivery of vacant possession of lands where there was no bona fide dispute as to ownership. Therefore, the High Court judge allowed the respondent's appeal, set aside both the orders of the sessions court, and entered summary judgment against the appellant. The appellant appealed. Counsel for the appellant contended that by virtue of ss 65 and 69 of the Act, s 70 thereof did not give jurisdiction to the sessions court to order delivery of vacant possession of immovable property, unless there was a relation of landlord and tenant, and unless the amount in dispute or the value of the subject matter did not exceed RM250,000.

Held, dismissing the appeal:

(1) (Per **Mahadev Shankar JCA**) The plain meaning of s 70 of the Act is that a sessions court shall have jurisdiction to hear *and* determine *any* action for the recovery of immovable property and thereupon to order the proper officer of the court to put the plaintiff in possession. Section 70(1) confers jurisdiction regardless of the value of that immovable property. So it matters not if the

immovable property is worth more than RM250,000 (see p 322D).

(2) (Per **Mahadev Shankar JCA**) Section 70 stands independent of s 65. The effect of s 70(2) of the Act is that in any such action there may be *added* a claim for rent or mesne profits *or* for damages. Although the reference to rent or mesne profits in s 70(2) envisages a tenant who is wrongfully holding over, the words 'damages arising to the plaintiff from the defendant holding over or resisting his right of possesion' clearly refer to damages for the trespass which can be added to the claim for recovery of possession from a trespasser (see p 322E–F).

(3) (Per **Mahadev Shankar JCA**) Since s 70(3) of the Act — which restricted the jurisdiction by providing that such jurisdiction shall not be exercised when the money claimed exceeds RM96,000 — has been deleted, if the money claimed arises from and is directly connected with the wrongful occupation of the property, the jurisdiction of the sessions court is unlimited (see p 322G–H).

(4) (Per **Shaik Daud JCA**) It seems abundantly clear that s 69(a), while prohibiting sessions court from hearing civil suits relating to immovable property, included an exception in that subsection itself by providing the phrase 'except as provided in sections 70 and 71' and as can be seen, s 70 expressly and specifically gives such jurisdiction to the sessions court (see p 325E).

(5) (Per **Shaik Daud JCA**) The only restriction appear to be as provided in the present sub-s (4) which provides that such jurisdiction shall not be exercised where in the opinion of the court, there is a bona fide question of title involved. From this, it seems clear that the sessions court is clothed with the jurisdiction to order delivery of vacant posession of immovable property irrespective of the value of the claim, unless there is, in the opinion of the court, bone fide question of title involved. From the facts of the case, clearly there was no such dispute or question (see p 325G–I).

[Bahasa Malaysia summary

Penentang adalah pemunya berdaftar kepada dua bidang tanah di Kuala Lumpur ('tanah tersebut'). Tanpa pengetahuan penentang, perayu yang merupakan seorang penceroboh, telah menduduki tanah tersebut. Perayu kemudiannya telah membina bangunan secara haram di atas tanah tersebut. Ekoran itu, penentang telah menerima notis daripada Dewan Bandaraya Kuala Lumpur supaya merobohkan bangunan itu, dan jika ia gagal berbuat demikian, tindakan undang-undang akan diambil terhadapnya. Oleh kerana perayu enggan berpindah, penentang telah memfailkan permohonan untuk penghakiman terus di mahkamah sesyen untuk mendapatkan semula tanah tersebut, ganti rugi dan kos. Perayu pula memfailkan

permohonan untuk membatalkan tindakan penentang atas alasan bahawa mahkamah sesyen tidak mempunyai bidang kuasa untuk membicarakan tindakan itu. Mahkamah sesyen menolak permohonan penentang, membenarkan permohonan perayu untuk membatalkan, tetapi enggan untuk memberikan apa-apa kos kepada perayu. Penentang merayu kepada Mahkamah Tinggi. Perayu memfailkan rayuan balas terhadap perintah mengenai kos. Kedua-dua rayuan dibicarakan sekali. Mahkamah Tinggi memutuskan bahawa mengikut s 70 Akta Mahkamah Rendah 1948 ('Akta tersebut'), mahkamah sesyen mempunyai bidang kuasa untuk memerintahkan penyerahan milikan kosong harta tak alih jika tidak terdapat pertikaian bona fide tentang pemunyaan. Oleh itu, hakim Mahkamah Tinggi membenarkan rayuan penentang, mengetepikan kedua-dua perintah mahkamah sesyen, dan memasukkan penghakiman terus terhadap perayu. Perayu membuat rayuan. Peguam perayu menegaskan bahawa memandangkan ss 65 dan 69 Akta tersebut, s 70 tidak memberikan bidang kuasa kepada mahkamah sesyen untuk memerintahkan penyerahan milikan kosong harta tak alih, melainkan ada perhubungan tuan tanah dan penyewa, dan melainkan amaun yang dipertikaikan atau nilai perkara subjek tidak melebihi RM250,000.

Diputuskan, menolak rayuan:

(1) (Oleh **Mahadev Shankar HMR**) Makna yang jelas bagi s 70 Akta tersebut ialah bahawa mahkamah sesyen mempunyai bidang kuasa untuk membicarakan *dan* memutuskan *apa-apa* tindakan untuk mendapatkan kembali harta tak alih dan selepas itu untuk memerintahkan pegawai mahkamah yang sesuai untuk meletakkan plaintif dalam pemilikan. Seksyen 70(1) memberikan bidang kuasa tanpa mengira nilai harta tak alih itu. Oleh itu, adalah tidak menjadi hal jika harta tak alih itu bernilai lebih daripada RM250,000 (lihat ms 322D).

(2) (Oleh **Mahadev Shankar HMR**) Seksyen 70 berdiri tanpa bergantung kepada s 65. Kesan s 70(2) Akta tersebut ialah bahawa dalam apa-apa tindakan seumpama ini, boleh *ditambah* tuntutan untuk sewa atau hasil perantaraan *atau* untuk ganti rugi. Walaupun rujukan kepada sewa atau hasil perantaraan dalam s 70(2) membayangkan penyewa yang gagal menyerahkan hak milikan, perkataan-perkataan 'ganti rugi yang ditanggung oleh plaintif kerana kegagalan defendan menyerahkan balik hak milikannya atau menghalang hak milikannya' dengan jelas merujuk kepada ganti rugi untuk pencerobohan yang boleh ditambah kepada tuntutan untuk mendapatkan kembali hak milikan daripada penceroboh (lihat ms 322E–F).

(3) (Oleh **Mahadev Shankar HMR**) Oleh kerana s 70(3) Akta tersebut — yang menghadkan bidang kuasa dengan memperuntukkan bahawa bidang kuasa itu tidak boleh dijalankan apabila wang yang dituntut melebihi RM96,000 — telah dipotong, jika wang yang dituntut timbul daripada dan secara terus berkaitan

dengan pendudukan yang salah di harta itu, bidang kuasa mahkamah sesyen tidak mempunyai had (lihat ms 322G–H).

(4) (Oleh **Shaik Daud HMR**) Adalah sangat jelas bahawa s 69(a), walaupun menghalang mahkamah sesyen daripada membicarakan guaman sivil berkaitan dengan harta tak alih, memasukkan pengecualian dalam subseksyen itu sendiri dengan memperuntukkan ungkapan 'melainkan seperti yang diperuntukkan dalam ss 70 dan 71' dan seperti yang dapat dilihat, s 70 dengan nyata dan spesifik memberikan bidang kuasa itu kepada mahkamah sesyen (lihat ms 325E)).

(5) (Oleh **Shaik Daud HMR**) Sekatan yang ada hanyalah seperti yang diperuntukkan dalam subseksyen 4 sekarang yang memperuntukkan bahawa bidang kuasa itu tidak boleh dijalankan di mana pada pendapat mahkamah, terdapat persoalan bona fide hakmilik terlibat. Daripada ini, adalah jelas bahawa mahkamah sesyen diberikan bidang kuasa untuk memerintahkan penyerahan milikan kosong harta tak alih tanpa mengambil kira nilai tuntutan, melainkan jika, pada pendapat mahkamah, persoalan bona fide hakmilik terlibat. Daripada fakta kes ini, adalah jelas tidak ada pertikaian atau persoalan sedemikian (lihat ms 325G–I).]

Notes

For cases on jurisdiction, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2092–2255.

Cases referred to

Hiew Kim Swee v GC Gomez [1955] MLJ 170
Mohamed Abu Bakar s/o Yusof v PA Syed Aboothahir s/o P Ahmed [1990] 1 MLJ 26

Legislation referred to

Subordinate Courts Act 1948 ss 65(1)(a) & (b), 69(a), 70, 71
Subordinate Courts Rules 1980 O 21(1)(d), 26A

Appeal from: Appeal No R2–12–55–1995 (High Court, Kuala Lumpur)

Mohamed Haniff bin Khatri Abdullah (*Haniff & Rajendran*) for the appellant.
K Thavakumar (*Mohamed Ismail & Co*) for the respondent.

Cur Adv Vult

Mahadev Shankar JCA (delivering the judgment of the court): Bank Islam Malaysia Bhd ('the bank') was at all material times the registered owner of the land comprised in Lot 1 and 2, 5½ Mile Jalan Cheras, Kuala Lumpur ('the said land'). Wawasan Cempaka Sdn Bhd ('the appellant'),

A entered into and remain in occupation of the said land without any right whatsoever so to do. In other words, they are trespassers. Nevertheless, the appellant commenced to erect an illegal structure on the said land which resulted in a notice being issued by the Dewan Bandaraya Kuala Lumpur on 8 June 1994 to the bank as the registered owner of the land, that if the B structure was not demolished and the land vacated by 22 June 1994, legal action would be taken. The bank thus became aware of the illegal activities of the appellant and gave notice to the appellant to vacate the property. Correspondence followed in which the appellant admitted that they had no right to be on the property, but merely asked for permission to retain on the property until November 1994 when they undertook to vacate C the said land. The bank did not agree, and initiated action in the Sessions Court at Kuala Lumpur to obtain recovery of the said land, damages and cost.

The appellant did not vacate the said land by November 1994. Instead, they blatantly continue to remain in occupation and instructed D their solicitors (who had themselves earlier written on behalf of the appellant to remain on the said land only up to November 1994), to resist the action. The appellant's solicitors filed a defence which amount to nothing more than a bare denial.

Two applications were then filed in the sessions court. The bank filed E an application for summary judgment. The appellant filed an application to have the action struck out on the ground that the sessions court had no jurisdiction to hear the action.

The appellant's solicitors must have been very persuasive. They succeded in convincing the learned president that notwithstanding that the F appellant was a trespasser, the true position in law was that the bank's claim was in reality an action for a mandatory injunction. It was further submitted that the sessions court could only entertain an action for recovery of immovable property if there had been a prior relationship of landlord and tenant as between the bank and the appellant which had been lawfully G determined. Since the appellant had never been a tenant and was clearly a trespasser, the submission was that the action should have been filed in the High Court.

This submission found favour with the learned president who dismissed the bank's application for summary judgment, allowed the H appellant's application to strike out, but refused to allow any costs to the appellant since the appellant was clearly a trespasser.

The bank filed an appeal to the High Court. The appellant filed a cross-appeal against the refusal of the learned president to grant them costs. Both appeals were heard together. The High Court judge dismissed I the appellant's appeal, allowed the bank's appeal and directed the appellant to give vacant possession of the said land, and further directed that the bank's damages be assessed in the sessions court and be paid by the appellant to the bank.

Before us, counsel for the appellant contended that by the relevant words in s 65(1)(a) and (b) of the Subordinate Courts Act 1948 ('the Act'), a sessions court only had unlimited jurisdiction to try all actions of a civil nature in respect of landlord and tenant, and all other actions of a civil nature where the amount in dispute or the value of the subject matter did not exceed RM250,000. It was submitted that these words led to the necessary implication that if the action was not in respect of landlord and tenant, or for a chattel or a money claim not exceeding RM250,000, the sessions court had no jurisdiction. Reference was then made to s 69 which is to the effect that the sessions court has no jurisdiction in actions of a civil nature relating to immovable property as provided in ss 70 and 71. It was contended that these sections should be read against the backdrop of the exclusion contained in s 65(1)(a) and (b), and that the provisions of ss 70 and 71 of the Act could not confer jurisdiction upon the sessions court where the action was simply for the recovery of immovable property which did not involve a pre-existing relationship of landlord and tenant.

We totally reject this submission. The plain meaning of s 70 of the Act is that a sessions court shall have jurisdiction to hear *and* determine *any* action for the recovery of immovable property and thereupon to order the proper officer of the court to put the plaintiff in possession. Section 70(1) confers jurisdiction regardless of the value of that immovable property. So it matters not if the immovable property is worth more than RM250,000. Section 70 stands independent of s 65. The effect of s 70(2) of the Act is that in any such action there may be *added* a claim for rent or mesne profits *or* for damages. Although the reference to rent or mesne profits in s 70(2) envisages a tenant who is wrongfully holding over, the words 'damages arising to the plaintiff from the defendant holding over or resisting his right of possesion' clearly refer to damages for the trespass which can be added to the claim for recovery of possession from a trespasser.

We need to say something now about s 70(3) of the Act which has been deleted by the Subordinate Courts (Amendment) Act 1994 Act ('the 1994 Act').

Under the Act as it originally stood, s 70(3) read as follows:

> (3) The aforesaid jurisdiction shall not be excercised when the money claimed exceeds the sum of ninety-six thousand ringgit, or where the rent payable in respect of the premises exceeds the sum of ninety-six thousand ringgit per annum or two thousand ringgit per mensem.

Since this section has been deleted, it is our view that if the money claimed arises from and is directly connected with the wrongful occupation of the property, the jurisdiction of the sessions court is unlimited.

The 1994 Act came into force on 24 June 1994. The removal of the limits under s 70(3) is consistent with the new s 65(1)(a) and (b) which now reads as follows:

> (1) Subject to the limitations contained in this Act, a Sessions Court shall have —

A (a) unlimited jurisdiction to try all actions and suits of a civil nature in respect of motor vehicle accidents, landlord and tenant and distress; and

(b) jurisdiction to try all other actions and suits of a civil nature where the amount in dispute or the value of the subject-matter does not exceed two hundred and fifty thousand ringgit.

B *Mohamed Abu Bakar s/o Yusof v PA Syed Aboothahir s/o P Ahmed* [1990] 1 MLJ 26 was decided before the amendment had come into force. Section 70(3) of the Act was very much alive when Edgar Joseph Jr J (as he then was) stated at pp 30 and 31 of the judgment that mesne profits are in the C nature of damages for trespass, and at p 31 that the damages payable have to be limited to the jurisdiction of the court.

The only limitation upon the sessions court's jurisdiction now is contained in s 70(4) of the Act which has no relevance to this appeal since there is no bona fide dispute as to title.

D In these circumstances, the order made by the High Court on 13 September 1995 will stand. We hope there will be no further delay in the recovery of vacant possession of the said land by the bank and in the assessment and payment of the damages due to the bank.

E **Shaik Daud JCA**: The issue to be decided in this appeal is whether pursuant to the Subordinate Courts Act 1948 ('the Act'), the sessions court has jurisdiction to order delivery of vacant possession of an immovable property where a dispute as to ownership does not arise.

The background of this appeal is not in dispute. The respondent was a licensed bank while the appellant was a company incorporated under F the Companies Act 1965. The respondent had filed a summons in the sessions court and in their statement of claim they averred that they were the registered proprietor of two pieces of land known as HS (M) 2660, PT No 1708 and HS 2661, PT No 1709 in the Mukim of Kuala Lumpur and also known as Lots 1 and 2, Batu 5½ Jalan Cheras, Kuala Lumpur G (hereinafter referred to as 'the said lands').

The respondent further averred that the appellant had trespassed and illegally occupied the said land without the permission of the respondent. As a result, Dewan Bandaraya Kuala Lumpur ('DBKL') issued a notice to the respondent as the land owners dated 22 June 1994, H directing them to demolish buildings erected on the said land without approval, failing which legal action would be taken against the respondent. As a result thereof, the respondent filed the summons in the sessions court for an eviction order.

After the appellant entered their defence, both parties each filed an I application in the sessions court.

The respondent filed an application dated 25 November 1994 for summary judgment against the appellant pursuant to O 26A of the Subordinate Courts Rules 1980 ('SCR'), praying inter alia, for an order:

(a) that the appellant do deliver vacant possession of the said land; A

(b) that the appellant do pay damages for occupying the said land;

(c) that the appellant do reimburse whatever payment in fine imposed by DBKL; and

(d) costs.

B

The appellant on the other hand, filed an application praying inter alia, for an order:

(a) that the respondent's summons and statement of claim be struck off pursuant to O 21(1)(d) of the SCR; and

(b) that the respondent's application for vacant possession of the said land be struck off with costs. C

The sessions court, after hearing both the above applications at one hearing, dismissed the respondent's application solely on the ground that the sessions court has no jurisdiction to give vacant possession of land, and that the matter should have been filed in the High Court. The court allowed the appellant's application, and struck out the respondent's summons and statement of claim. The court also ordered each party to pay its own costs. D

The respondent appealed to the High Court, while the appellant cross-appealed against the order on costs. The High Court concluded that E by virtue of s 70 of the Act, the sessions court had jurisdiction to order delivery of vacant possession of lands where there is no bona fide dispute as to ownership. Therefore, the learned High Court judge allowed the respondent's appeal, set aside both the orders of the sessions court as there was in fact no dispute as to ownership, and entered summary judgment F against the appellant. Hence, this appeal before us.

As mentioned earlier, the sole issue in the sessions court, High Court and this court is on whether a sessions court has jurisdiction pursuant to the Act to order delivery of vacant possession of immovable property. In this connection, the provision most relevant is s 70 of the Act which G provides as follows:

> (1) Subject to subsection (4), a Sessions Court shall have jurisdiction to hear and determine any action or suit for recovery of immovable property, and thereupon to issue an order to the proper officer of the Court to put the plaintiff in possession of the property.
>
> (2) In any such action or suit, there may be added a claim for rent or H mesne profit and for damages arising to the plaintiff from the defendant holding over or resisting his right of possession or re-entry, and for damages for breach of any covenants, condition or agreement in relation to the premises.
>
> (3) Deleted.
>
> (4) Except as provided in s 71, the aforesaid jurisdiction shall not be I exercised in any case where, in the opinion of the Court, there is a bona fide question of title involved and, subject to that section, recovery of possession of any immovable property under this section

A

> shall be no bar to the institution of an action, suit or proceeding of a civil nature in the High Court for trying the title thereto.

It is the contention of learned counsel for the appellant that by virtue of ss 65 and 69 of the Act, s 70 thereof did not give jurisdiction to the sessions court to order delivery of vacant possession of immovable property, unless B there is a relation of landlord and tenant. He contended further that clearly in the context of this case, such a relationship did not exist. He further added that the sessions court will be so empowered only when the tenant holds over after the termination of a tenancy agreement or after such agreement lapsed.

C With respect, I am not in agreement with this line of argument. On my reading of s 70, it seems clear beyond any doubt that this section clothed the sessions court with such a power. It is my view that s 70 is a specific and express exception to s 69 which provides:

> 69 Sessions Court shall have no jurisdiction in actions, suits or proceedings of a civil nature —
>
> D
>
> (a) relating to immovable property *except* as provided in sections 70 and 71; (Emphasis added.)
>
> ....

It seems abundantly clear that s 69(a), while prohibiting sessions court E from hearing civil suits relating to immovable property, included an exception in that subsection itself by providing the phrase 'except as provided in sections 70 and 71' and as can be seen, s 70 expressly and specifically gives such jurisdiction to the sessions court. Section 70 was in fact amended in 1994 by the Subordinate Courts (Amendment) Act 1994 which deleted the old subsection (3). Before the amendment, although F s 70(1) gave such jurisdiction to the sessions court, but the then subsection (3) restricted this jurisdiction by providing that such jurisidiction shall not be exercised when the money claimed exceeds RM96,000. The 1994 amendments deleted subsection (3) and thereby removed this restriction completely.

G Thereafter, the only restriction appear to be as provided in the present subsection (4) which provides that such jurisdiction shall not be exercised where in the opinion of the court, there is a bona fide question of title involved. From this, it seems clear to me that the sessions court is clothed with the jurisdiction to order delivery of vacant posession of H immovable property irrespective of the value of the claim, unless there is, in the opinion of the court, bone fide question of title involved. Even this restriction is subject to s 71 which empowers the sessions court to adjudicate, even in cases where there are disputes or question of title in immovable property provided the parties interested consent. From the facts before me, in this case, clearly there is no such dispute or question. On the I contrary, learned counsel for the appellant in his submission conceded that there is no such dispute in title.

Disputes on the jurisdiction of sessions court in such matters is not new. As far back as 1955, it was decided that magistrates' court (and

sessions court) had such jurisdiction. In *Hiew Kim Swee v GC Gomez* [1955] MLJ 170, the issue as to whether a bona fide question of title is involved was sought in an application for vacant possession under s 70(4) of the Courts Ordinance 1948. Section 70(4) of the Courts Ordinance 1948 is similar to the present s 70(4) of the Act. The learned magistrate allowed the application when he held that there is no dispute as to title. On appeal to the High Court, Thomson J (as he then was), after reviewing the position in England, held at p 173:

> I now return to s 70 of the Local Courts Ordinance. It seems to me clear that the jurisdiction given to magistrates' courts (and sessions courts) by that section is similar to that given to the County Court by s 122 of the 1846 Act, that is to say, a jurisdiction to decide questions of possession where no question of title is involved.

In that case, the learned judge dismissed the appeal when he agreed that there was no dispute as to title. In the circumstances, there can be no doubt that the sessions court has the jurisdiction to order delivery of vacant possession of immovable property where there is no bona fide question of title involved.

In the light of these and the clear and unambiguous provisions of s 70 of the Act, I hold that the sessions court has the jurisdiction to order vacant possession of immovable property provided there is no bona fide question of title involved. Even then, the court would have jurisdiction if the parties interested consent. In the present appeal, there is admittedly no such question involved. Therefore this appeal is dismissed with costs.

NH Chan: I concur.

Appeal dismissed.

Reported by Jafisah Jaafar